



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME  
COMMISSION

**Reference: Review of the Australian Crime Commission Act 2002**

TUESDAY, 11 OCTOBER 2005

CANBERRA

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**JOINT STATUTORY COMMITTEE ON THE  
AUSTRALIAN CRIME COMMISSION**

**Tuesday, 11 October 2005**

**Members:** Senator Santoro (*Chair*), Mr Kerr (*Deputy Chair*), Senators Ferris, Ludwig and Polley and Mrs Gash, Mr Hayes, Mr Richardson and Mr Wood

**Members in attendance:** Senators Ludwig and Santoro and Mrs Gash, Mr Hayes, Mr Kerr and Mr Richardson

**Terms of reference for the inquiry:**

To inquire into and report on:

The operation of the *Australian Crime Commission Act 2002*, with particular reference to:

the effectiveness of the investigative, management and accountability structures established under the Act, including:

- the Australian Crime Commission;
- the Chief Executive Officer;
- the Examiners;
- the Australian Crime Commission Board;
- the Intergovernmental Committee; and
- the Parliamentary Joint Committee on the Australian Crime Commission.

whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.

The need for amendment of the Act.

Any other related matter.

**WITNESSES**

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**Committee met at 4.10 pm****HANNAFORD, The Hon. John Planta, Examiner, Australian Crime Commission****MILROY, Mr Alastair, Chief Executive Officer, Australian Crime Commission****OUTRAM, Mr Michael, Director, National Operations, Australian Crime Commission****POPE, Mr Jeffrey Stephen, General Manager, National Intelligence Services, Australian Crime Commission****WAUCHOP, Ms Debbie, General Manager, Strategic Policy, Australian Crime Commission**

**CHAIR (Senator Santoro)**—Welcome. I note that today's hearing is a continuation of the evidence given to the committee at its public hearing in Canberra on Friday, 7 October. Thank you, once again, for making yourselves available. As public servants, you are reminded that you not required to answer questions relating to policy matters and will be given the opportunity to refer such questions to either the minister or to superior officers. Information on parliamentary privilege and protection of witnesses and evidence has been provided to. I now invite you to make a further short introductory statement, after which we will move to general discussion.

**Mr Milroy**—Thank you, Chair. I will probably reserve any comments until the conclusion, if possible.

**CHAIR**—Okay. Previously, we were in dialogue with you, Mr Hannaford.

**Mr Hannaford**—Yes.

**CHAIR**—I might start with some questions in relation to examinations and coercive powers. The coercive powers have been a matter of some discussion, as you would have heard throughout the hearings. Do you believe that the structural change to an organisation that is led by police is leading to a leakage of the ACC's coercive powers and to more policing matters that are routine?

**Mr Hannaford**—No. The situation is that when the board makes its determination for a special operations special investigation that provides a particular focus for the exercise of the powers. As a result of the management mechanisms which have been put in place by the CEO and approved by the board through the governance oversight committee, that again provides the focus for particular operations that are to be conducted. It is only as a result of the conduct of those operational activities that a decision is made at an operational level that there should an exercise of the coercive powers, and then submissions are made to the examiners. Normally, you would find that there is the issue of notices for the production of materials as part of that investigation operation. That again helps to hone the nature of any further particular inquiries that are needed, and then submissions are made to the examiners. The powers are only really used where there is a real need for them. The examiners are quite diligent in making decisions as to whether the powers ought to be used. There have been circumstances where examiners have determined that it was not appropriate, that there should be examinations and they will reject applications. It has not happened often, but it has happened.

**CHAIR**—In terms of secrecy powers, some witnesses have expressed concern that the secrecy powers inhibit solicitor-client communication and examination matters. Has the ACC considered any possible remedies for this which would allow legal advisers to more properly advise their clients in ACC matters?

**Mr Milroy**—That is one of the matters under discussion with the Attorney-General's Department. Mr Hannaford may be prepared to comment—without going into matters of policy, of course—in order to assist the committee.

**Mr Hannaford**—In relation to a witness who is required to appear before the examiner, to the best of my knowledge there is no inhibition upon that witness being able to get legal advice. In fact, they would be encouraged to do so.

**CHAIR**—Why would we be getting that feedback from witnesses?

**Mr Hannaford**—I am not certain, Chair. I have read some comments from certain witnesses who have appeared before you, and I am not quite certain what they are focusing on. It may be that there is a view that there should be greater access to section 27 support out of the Attorney-General's Department for legal assistance, but I am not certain. I have not seen specific reference to that. If what they are concerned about in relation to secrecy is this issue of the dissemination of the transcripts, that has been an issue that has been raised separately. It is a matter which is of concern to us and there are some submissions before the Attorney-General's Department about some policy changes. That may be a particular issue of concern.

**Mr Milroy**—If the committee wishes, we can consult with the Attorney-General's Department and provide you with some comments in relation to our understanding of why this has been raised as an issue, if that would be helpful to the committee.

**CHAIR**—That advice would be helpful, Mr Milroy. Thank you for the offer. A further matter put to the committee related to the fate of the transcripts of examinations. To what use are they put after their immediate application and to what extent are these transcripts susceptible to subpoena by defendants in criminal trials?

**Mr Milroy**—That is another matter that is currently under consideration by the Attorney-General's Department. Mr Hannaford might like to give you his practical experience of this.

**Mr Hannaford**—During the course of an examination a witness is asked to raise with us any matters which they have in terms of concern about access to the evidence that they have given. That is asked to be put onto the transcript, because it is a relevant consideration for the examiner in making a decision as to the dissemination orders that are made. Also, by having it on the transcript, it is a relevant consideration when the CEO has to make a determination as to access. There have been circumstances where we have made very restrictive dissemination orders, but the courts are able to subpoena transcripts, and have done so. I noted that one of the witnesses made some reference to that. There are some concerns that we have had in relation to that access which we have taken up with the Attorney-General's Department, with a view to getting some review of the legislation, which might further restrict access or give greater control over the access that is made. Obviously, some policy decisions will have to be made in that regard.

**CHAIR**—What security arrangements are made for them when they are lodged with other agencies?

**Mr Milroy**—We can probably come back to the committee with a response to that question. I believe you are referring to the evidence given by Ms Westwood. We may be able to comment to the committee out of session.

**CHAIR**—We would be grateful for that. In terms of time given to witnesses to produce documents, the committee has been told that witnesses are often given very little time to produce documents or appear at an examination. They claimed that this impedes their ability to seek advice on a summons or the production of documents. Does the commission believe that since it is not a court it is not obliged to impose reasonable time constraints on summonses?

**Mr Hannaford**—The examiners take the view that a reasonable length of time should be made available for both the production of material and for a witness to be present, and the examiners form a view as to whether or not the time is reasonable. But we also extend time if a request is made for that. On some occasions, if it was thought that they needed a significant additional amount of time, we issue new summonses so as to allow that particular period of time to be available.

**CHAIR**—Is it a regular occurrence that people ask for further time?

**Mr Hannaford**—I would think that out of something like about 600 notices to produce that have been issued this year, we might have had upwards of eight or 10 requests, to the best of my knowledge, for additional time.

**CHAIR**—So it is not a regular request or complaint?

**Mr Hannaford**—No. To the best of my knowledge, we had one from a law firm that asked for some additional time because they had things in storage; others have come from the banks—and normally with the banks we have a working relationship in relation to what they want as reasonable time anyway. If they find that they have got to search a lot more, they just ring up and appropriate arrangements are made.

**CHAIR**—There have been some witnesses who have suggested that ACC examinations have basically assumed the atmosphere of a court—a full court—when, in fact, they are not courts, and that examiners take on the role of judges when, in fact, they are not judges. Are you able to comment on these issues of formality that have been raised by some witnesses?

**Mr Hannaford**—Yes, I noticed that, and I was quite surprised to read it. I think it would not be unfair to suggest that a couple of years ago there was an element of an adversarial approach, taken by some of the lawyers assisting the examiners. In the last two years that has very significantly changed. All the examiners take the view that an adversarial approach is not conducive to encouraging people to be relaxed and to discuss matters with the examiners and with counsel assisting. Training programs have been put in place, for both the examiners and the lawyers, to assist them in adopting a different approach to these discussions.

We try to develop an atmosphere where they are seen as not adversarial and they are not intimidatory. We prefer to regard them as people coming in as clients who are having discussions with us, and we try to develop that client discussion environment. It is much more conducive to the purpose of the examinations. That is not to say that, where there are witnesses who are not cooperative, that you may not have to, on some occasions, adopt an adversarial approach, but that would be the exception.

**Mr HAYES**—In relation to that, is the adversarial approach taken by counsel assisting the examination?

**Mr Hannaford**—Yes.

**Mr HAYES**—So the examiner would still act as effective chair of the examination?

**Mr Hannaford**—Basically the examiners are managing the process, so you have counsel assisting, who are all in-house lawyers, trained in the cognitive interviewing techniques which we seek to use. That is not to say that the examiners do not, from time to time, conduct some of the questioning themselves. And sometimes, depending upon a relationship—

**Mr HAYES**—It is inquisitorial anyway, in many—

**Mr Hannaford**—It is inquisitorial, but it is all about making certain that you try to engender a relationship between the person being spoken to and the person who is conducting the questioning. And you would try to encourage a situation in which it is counsel assisting that is conducting the questioning, and the examiner is managing the process.

**CHAIR**—One witness in fact commented that examiners frequently fail to make formal response to submissions put by counsel representing witnesses. Do have any comment on that?

**Mr Hannaford**—That would surprise me because, again, the examiners are required to make administrative decisions and those administrative decisions are subject to review before the tribunal. So it would be a surprise to me if there are submissions made that are not in fact ruled upon.

**CHAIR**—The secretary reminds me that that comment was made by Mr Faris QC at our Melbourne hearing. He was in a bit of an aggro mood that morning, but that was one of the comments that came forth. So you are basically saying that examiners do provide reasonable responses to submissions that have been put by counsel representing witnesses?

**Mr Hannaford**—Yes. We would make reasonable responses—not necessarily the responses that counsel such as Mr Faris might necessarily want. We recognise that decisions made by us are administrative decisions and are subject to review. Therefore, we should be prepared to justify our position.

**CHAIR**—The ACC at present does not have a contempt type power and, strictly, such powers belong to the courts, as has recently been acknowledged by the ICAC in New South Wales. In your view, what sorts of powers is it appropriate for the ACC to have in this area?

**Mr Hannaford**—The examiners have taken the view that there needs to be some strengthening in this area. Some discussions are going on with the Attorney-General's Department in relation to it. A campaign would appear to be developing among some organised crime groups of what can basically be described as civil disobedience to the framework that the ACC is meant to be operated under. We have had three persons who have failed to attend. The advice we have received is that, if we wish to prosecute people who fail to attend, we have to be able to prove that they intended to fail to attend. You can imagine the difficulty that is embodied in trying to prove that somebody intended to fail to attend, other than the fact that they did not attend. We have had four people who have appeared and then failed to—

**CHAIR**—It would be pretty self-evident, wouldn't it, if they don't turn up?

**Mr Hannaford**—One would have thought so, but we have been advised that the Australian Crime Commission Act is not consonant with the Commonwealth Criminal Code. That is a matter about which we are having discussions with the Attorney-General's Department. Four people have failed to take an oath. We have had 21 people who have refused to answer questions. We have had one person who failed to produce documents. Two people have been prosecuted for having disclosed the fact that they have had a summons, and one person has been charged with breach of non-publication orders.

In relation to disclosures, whilst we are aware of a number of occasions when people have in fact disclosed that they have been summonsed, the source of the evidence is such that you are not able to use it in court. Therefore, it is very difficult to get prosecutions of such people. There would appear to be a view that the prosecutorial process is not necessarily adequate to encourage people to cooperate with the examination process if they wish to embark upon a program of civil disobedience. Should the examiners themselves have what might be described as the contempt power? No, they should not. That should be vested in the courts as an appropriate check and balance. There are certain management measures that might be adopted to facilitate that process, but allowing a civil enforcement procedure administered by the courts to encourage witnesses to observe the obligations that have been imposed on them by the legislation would be, I think, a beneficial approach.

**CHAIR**—But that would fall just short of examiners and the commission being afforded contempt powers.

**Mr Hannaford**—I do not think we would be advocating that the commission and examiners should be put in that position. That is a role for the courts. Therefore, we should be looking at a framework which makes it easy for the courts to be able to expeditiously assist and oversight the examination process.

**CHAIR**—Is that framework able to be administratively provided or would it require legislative amendment and change?

**Mr Hannaford**—It would require legislative amendment. There is also the question of whether it is something that should be vested solely in the federal courts or whether it should be jointly vested in the federal and state courts. There is the question of how it can be dealt with expeditiously.

**Mr HAYES**—Are you talking about an amendment to the federal Crimes Act?

**Mr Hannaford**—No, it would necessitate amendment to the Australian Crime Commission Act.

**CHAIR**—What arrangements are made for an unrepresented person in an examination?

**Mr Hannaford**—The only mechanism for an unrepresented person to get legal assistance is through section 27. The examiners have put some proposals to the Attorney-General's Department for consideration in relation to that.

**CHAIR**—In terms of informing them of their rights?

**Mr Hannaford**—No, the counsel assisting will advise an unrepresented witness beforehand of his rights and of the way in which those rights can be exercised. The examiners also inform them of their rights and the way in which those rights can be exercised. We seek to encourage witnesses to take advantage of the protections given by the act. It is a rare occasion when a witness does not seek to take advantage of the protections up front. If a question is asked which we believe should warrant the witness seeking those protections we again encourage them to gain those protections. If a witness makes an admission when they do not have the protections we will again draw to their attention the fact that they have made that admission, the consequences of it, and ask them again whether they want to take on the protections which are available under the act. The view that the examiners take is that a witness who takes advantage of the protections and fully understands what they mean is a person who is more likely to cooperate with the examination process.

**CHAIR**—I meant to follow up on an answer to a previous question. You said that you have perceived or identified a campaign of civil disobedience. Apart from witnesses not appearing or refusing to provide documents or answer questions, what manifestation does that campaign take on? Is it one that is encouraged very explicitly by the elements of the legal fraternity? Who is pushing or encouraging it?

**Mr Hannaford**—The area in which we have seen the greatest level of civil disobedience—the term I use—is through the organised motorcycle gangs. The committee is no doubt aware that for an organised motorcycle gang member it is an offence for them to ever talk to law enforcement. They have chosen to use a number of approaches to avoid answering questions. They will either say straight up front that they are not going to answer questions, or there are a number of variations which are now appearing, such as, 'I use drugs, therefore I have difficulty remembering anything.' The latest one we are getting is, 'I do not wish to give false or misleading evidence. To say yes to that question could be misleading; to say no to that question could be misleading. Therefore I have difficulty answering the question.' There are variations on that theme. Clearly, there has been the suggestion of significant briefing of these people as to how to appear to be not breaching the law but to be doing their best to hinder the operation of the examination process. Of the 21 people who are currently charged for refusal to answer questions, the vast majority would have some association with organised motorcycle gangs.

**CHAIR**—Without wanting to ask you to stray into areas of policy, what are the sorts of changes to the legislation you are looking for that would facilitate greater and more meaningful interaction between that type of witness and, say, an examiner like yourself?

**Mr Milroy**—That is difficult to answer because we are currently having fairly detailed discussions with lawyers in the Attorney-General's Department, to which Mr Hannaford and others are party. That process has been ongoing for nearly six weeks. That question is probably better directed to the Attorney-General's Department to comment on where we are with the majority of these law and administrative reform matters—unless we go in camera to discuss them. As I said on a previous occasion, with respect to many of the practices that are carried out, we are divulging a lot of the methodology in the public hearing if we continue.

**CHAIR**—I will take your advice. Thank you for that. Mr Richardson has some questions on accountability.

**Mr RICHARDSON**—And I also have some questions on resources. The Western Australian minister for police expressed some concern in relation to the apparent reduction at the Perth ACC office—from, I believe, eight investigators down to one. Was this reduction as a result of a lack of resources, or for a strategic reason?

**Mr Milroy**—I think that, unfortunately, at the time the minister visited and put in her submission, the numbers were down because there was a process of recruitment being undertaken. Basically, we try to advise the law enforcement agencies of the dates when the secondees are returning, to try to facilitate their replacement so there is no gap, but unfortunately that was the position then. I think the numbers are up to two or three more officers, and when she visited there was only one. I think it is important to understand, of course, that we ensure that the balance and mix of our specialist resources in any location around the country are allied to our national requirements. Although the numbers might fluctuate up and down depending on the balance and mix of resources, it is required to operate in that environment to deal with a specific board-approved menu of work. So it does vary, and it is not the same as it was in 2003 when we first started because our menu of work has varied.

**Mr RICHARDSON**—In regard to the actual recruiting and/or secondees, it has been mentioned in evidence that some secondees get unequal pay in comparison to some other operatives. I believe the Melbourne police association are trying to address that. Is anything being done from within the board, or at the board level, to pay every operative the same amount?

**Mr Milroy**—We had some discussions very early in the piece to try to come up with some common terms and conditions, and I think that has been an issue that has been around for some years, even prior to the establishment of the ACC. A director of corporate services has been going around, talking to each individual commissioner, or representatives of the commissioners, to look at a better way of recruiting seconded officers, so that there is a bit more equity in the process. Whether that is a model of leave without pay—which is quite common in a number of jurisdictions, whereby we would advertise the terms and conditions to come and work at the ACC on a leave without pay arrangement—it is still a secondment, and all the legal and administrative issues would still be addressed. A majority of police forces in Australia currently second people on leave without pay, and have been doing so for a number of years, successfully,

and we just happen to be operating under the old system. So we are working through that process at the moment to try to overcome exactly what you have identified.

**Mr RICHARDSON**—In relation to accountability, it is interesting that the ACC is now multifaceted. It is interesting to see that, in evidence given back under the NCA, it was referred to as the solicitor club or the lawyer club, and they are now the police club! In fact, the Victorian commissioner of police has suggested that at least one facet be removed, and that is the PJC. How do you see those accountabilities affecting the work of the ACC? In relation to the structure of the board, you have a lot of dealings with CrimTrac and also with the Taxation Office—should someone from those areas be a part of the board? Should you, Mr Milroy, as the chief executive officer? Do you have any comment in relation to those questions?

**Mr Milroy**—Yes, I think there were similar questions asked at the last hearing but, as I indicated, I think that the current governance or accountability structures that are in place at present work very well. We work very well with the various bodies. As to the tax commissioner, as is indicated at page 19 of our joint submission, the board sees significant potential and also supports the inclusion of the tax commissioner. That is a matter for government, and the inclusion of any other agency on the board is, again, a matter for government. But with respect to the current governance arrangements that are in place with the PJC, the IGC and the board, I think they work very efficiently and they also ensure that the agency operates in an accountable fashion and that there is a significant level of independence and transparency in place.

**CHAIR**—We will suspend the proceedings for a short time so that members can attend a division in the House of Representatives.

**Proceedings suspended from 4.39 pm to 5.00 pm**

**CHAIR**—Now that we are quorate, I declare the hearing open again. Mr Richardson, you were asking some questions before the division.

**Mr RICHARDSON**—Thanks, yes. Mr Milroy, the Ombudsman indicated in his submission that his oversight of the ACC is limited and that the accountability framework could be strengthened by an amendment to section 55AA of the act, to broaden the scope of his briefing of this committee. Going back to my former question and your answer, what implications would that have for your internal accountability regime and, more importantly, is it needed?

**Mr Milroy**—Again, I believe that is a matter that is currently being looked at by the Attorney-General's Department. But, if an amendment were made, we would adjust our internal professional standards and accountability procedures accordingly. For the record, we have taken a very transparent approach to accountability issues. I now have some fairly open and frank discussions with the Commonwealth Ombudsman and advise him on matters under the act he does not need to know about—but I keep him up to date on anything that falls within the complaints area. Again, I have no problems with any strengthening of any relevant legislation. I am also conscious, of course, of the proposal to set up an Australian Law Enforcement Integrity Commission, and we would have to take note of that body and the relevant act, if it comes to bear, in our internal procedures and adjust them accordingly.

**Mr RICHARDSON**—Thanks, Mr Milroy.

**Mrs GASH**—I have one very quick question, if I could. If you had a wish list, what would you like to resource that you cannot already do?

**Mr Milroy**—For the record, at the last hearing we did indicate that we are currently funded to deal with our current menu of work. We have recently been granted some funding as a result of the Wheeler report, \$20-something million over five years, which will assist in improving the capabilities of our database and also allow us to purchase some fairly sophisticated analytical tools to become a state-of-the-art, intelligent investigative body, which we need to be to meet the demands of organised crime. And to have a sustainable resources capability we are entering into discussions with the Attorney-General's Department and we are going through the appropriate budgetary process at this very moment to look at what our future requirements are.

**Mrs GASH**—Thank you.

**Mr HAYES**—I will follow on from my colleague Mr Richardson about accountability. When the ACC seconds operational police, they are still sworn in their home jurisdiction, but are they still subject to the integrity regimes of their own jurisdiction? For instance, if a number of New South Wales Police officers were seconded, would they be subject to the oversight of the Police Integrity Commission?

**Mr Milroy**—Yes, that is correct. All of the seconded officers, irrespective of whether they are Commonwealth, state or territory police, are still bound by the integrity regimes of their parent force.

**Mr HAYES**—The rest of the ACC are effectively employed under the Public Service Act and their accountability is no higher than that prescribed by the act. That being the case, are there variances in levels of accountability for your operatives?

**Mr Milroy**—No. Irrespective of whether a person is a public servant who has been employed, or a contractor or a secondee, they have to comply. First of all, they have to go through the 'highly protected' vetting process, and all staff, irrespective of whether they are secondees, public servants, contractors or are employed by the ACC, are governed by the code of conduct. So one of the conditions is that, when they come, although they understand that they are subject to the integrity regime of their parent force, they are also governed by the code of conduct. To give a practical example, if an officer on secondment breached our code of conduct, or was detected in any sort of behaviour that was inappropriate under our terms and conditions, then we would initiate an investigation and immediately advise the commissioner or the head of the agency concerned, and either jointly pursue the investigation or have it investigated by the parent force.

**Mr HAYES**—That being the case, if you did have an investigation, it would not have coercive powers in the investigation whereas, for instance, the Police Integrity Commission in New South Wales does have coercive powers in dealing with their own constables, or people holding the office of constable. This goes to the issue that has been raised in a couple of submissions so far of the fear of leakage of information from the ACC. If you were conducting the investigation, would you notify the home jurisdiction, and would they be free to pick what is effectively in West Australia a standing royal commission or—

**Mr Milroy**—The answer to that is yes.

**Mr HAYES**—So what standing do you have in those proceedings? Are you seen then as the host employer?

**Mr Milroy**—I will just give an example. We recently detected a seconded officer who, you might say, was inappropriately using the email and communicating with people outside the organisation. This was not considered to be of a sensitive nature, but that conduct was in breach of our procedures and we immediately advised their commissioner. Investigation was entered into, and the officer was returned and is currently the subject of his own force's investigations. I will be advised formally by the respective commissioner of the result of the investigation.

So the seconded officers are subject to the full range of the integrity commission regime of the parent force. In addition to that, of course, if they work for the ACC they are subject to our code of conduct, and full investigations are entered into. I have a policy that we do not investigate serious matters internally. I would normally engage a suitably qualified external investigator to deal with the matter. We are fairly transparent in our process and, immediately we detect something, I advise the PJC, the board and the minister, and keep them advised on the conduct of the investigation. So it is a very transparent and open process, but I do not think there is—

**Mr HAYES**—I am just trying to get this clear in my own mind. On the one hand we have, presumably, some of your surveillance or investigative staff subject to pretty significant integrity regimes, whether they are acting in their own state or acting with the ACC. But, on the other hand, employees of the ACC, by virtue of being employees under the Public Service Act, simply sign off to a code of conduct. Is that an imbalance in terms of the integrity regime that applies throughout the ACC?

**Mr Milroy**—Some of the staff that are public servants are also, of course, sworn members, or have special member status. They would come under the AFP.

**Mr HAYES**—But they have been sworn in under the AFP Act.

**Mr Milroy**—Yes, that is correct. That is right. They are operational people.

**Mr HAYES**—They are special members under the AFP Act, and then they are subject to the integrity regime and discipline of the AFP.

**Mr Milroy**—Yes, and if a public servant is involved in a corruption matter or anything of a criminal nature it is referred to the Federal Police for investigation or it is referred to the Commonwealth Ombudsman. There is a regime in place to deal with corruption issues to do with public servants and then there is a regime to deal with secondment officers. But all staff who work for the ACC, whether they are seconded or public servants, are still governed by our code of conduct and our strict operating guidelines. They sign up to that when they take the position, after they have been through a very thorough vetting process, up to highly protected level. What you are suggesting is that there seem to be two different systems here.

**Mr HAYES**—Perhaps there is an ethical imbalance, particularly when people from the legal profession complain about a preponderance of police, even on the board of the ACC, giving rise

to the notion that police do not rat on police and do not involve themselves in other people's patches. I would imagine that everybody who is a sworn member of the police force—and that includes those board members, being commissioners of police—would be subject to the highest form of integrity regime applying in their own states and territories, as well as any other liability flowing to them by virtue of being on the ACC board. Is that the case?

**Mr Milroy**—Yes.

**Mr HAYES**—I want to go back to your comment about swearing people in as special members of the AFP under the AFP Act. I understand that. That effectively makes them special constables. It presumably gives them the power of arrest, the ability to use force and possibly the ability to carry a weapon. Is it a common practice to swear in as special members of the police public servants who are not sworn constables?

**Mr Milroy**—First of all, they are public servants. If a former member of a law enforcement agency takes up a position as a team leader of surveillance or as a team leader in our investigation or intelligence area, it is a requirement for the functions that they are performing. In addition to that, there is also the issue to do with seconded officers who come from a state and who are required to operate in another state or to deal with Commonwealth matters. They are subject to an assessment by the Federal Police as to whether they are deserving of being approved to have special member status. It is identified on page 13 of the report by the Attorney-General's Department and also on page 12 of the AFP report that the current arrangements are probably not satisfactory in the long term and that there is a need for a class of officer or that the ACC should see some protection under its own act for officers who are required to carry out specific operational duties who are public servants—that is, who have the required training and skill to carry out specific duties but who are no longer sworn officers of a police or a regulatory body.

**Mr HAYES**—Would it be fair to say that many of those who are sworn in that capacity would have been police officers seconded to the NCA?

**Mr Milroy**—Some of them would have been. In our current work force we have covert operatives and we have surveillance. There would be some staff who, at the time of the merger, would have fallen into that category of being former members of the NCA, who were former police officers who had special member status and became part of the ACC work force. We have recruited some staff who are team leaders in the surveillance arena, in some of the intelligence and investigation teams and also in the covert area, who fall into the category of being former sworn officers with powers who have applied for positions at the ACC to carry out those duties I have referred to. As a result of those duties they left a police force either here or overseas and immediately transferred into the ACC, with the relevant requisite training and qualifications to be suitably sworn, following an assessment by the AFP, for special member status.

**Mr HAYES**—What I am trying to get clear is this: if that class of person, as I understand it, is involved in surveillance or something with an operational significance that requires firstly to be sworn and secondly to have all of the necessary powers that go with being a special constable, is that likening your organisation to a police organisation or is it indicating that perhaps those areas should actually be staffed by police officers?

**Mr Milroy**—Yes, I think it is an issue that we had a look at at the very beginning, although, as I indicated, we did have a number of staff that fell into that category at the time of the merger. I know it is an issue that has been around for quite a while. I recall that, in the third evaluation of the NCA in 1997, there was this issue about having in-house contracted investigators who fell into that category that you speak of. I think a similar thing applies at the moment with regard to having some continuity in your management and supervision areas and also having those who will retain the knowledge of the particular cases. With the secondee arrangements, they leave after two years. Some of these cases we have been prosecuting for five years.

Also, trying to develop a core within the organisation at team leader level of people who will in actual fact be the team leaders in these multiskilled teams and ensure that the right culture is developed and that the right management and supervision, codes of conduct and operational efficiencies are applied has led us to acknowledge that in that small stream there is a requirement to have officers who are members of staff and who bring that level of management supervision and expertise. Of course, I do not suggest that that stops for one moment. There are a number of senior staff who have come from a number of other agencies on secondment who fall into that category as well. That has been seen to be a trend.

For some benchmarking we have looked at the British model, which, of course, comes into being in April next year. They have a similar issue. I believe that the Attorney-General's Department is looking at the Serious Organised Crime and Police Act from the UK, which has just been put in place. It really does indicate a similar problem. They actually have a body similar to the ACC operating in a law enforcement environment that is not fully staffed with sworn police officers, but they need the powers. It is interesting that the powers are not necessarily the full powers of constables, but there are certain functions that they specifically carry out, as we would, that may need one or more of those powers in an approved nominated officer. These are things that are currently under consideration at the present moment.

It should not be seen by anyone that this is a ploy to gradually reduce the number of seconded operational police officers in the ACC because that is not the reason. Quite clearly, if you look at the balance and mix of our resources, we have sworn officers, permanent staff who need special member status, and then other specialists who are probably recruited to carry out functions that certain police officers in this country would not carry out, yet they would need these powers to be able to do their job because of the danger involved. Then, of course, we have another range of staff that are contractors who bring special skills. So having the right balance and mix of resources in terms of who should be sworn and who should not be and who should be a secondee is a very important part of the flexibility and resources that this organisation needs.

I guess it will probably be an issue that I will address. It is on the agenda for the IGC this week. As you know, the IGC have a requirement to, after three years, look at the balance and mix of the in-house investigative resources of the ACC, and the issue of the number of sworn officers to contractors and specialists will no doubt be an issue that it will be required to report back on.

**CHAIR**—Because we are well and truly out of time and need to have a brief session in camera, Mr Hayes may have some follow up questions that he will submit to you on notice. We would be grateful for your assistance with that. Senator Ludwig has one more question to ask.

**Senator LUDWIG**—The question is about the other side of the equation. We have talked about sworn officers and those people who might be able to come in to help you. But I was looking for a more concrete example of where you have members of the public providing information to you—the other side. One example comes to mind, although it may not be a good one—nevertheless, it is there. It is the example of Michael Brereton and Operation Wickenby. That is the sort of interaction I am asking about. How does that work? Does he as a member of the public provide information that you can act on and use, and then you respond? How does that interaction work? I am trying to contrast it with how the AFP might operate. They have a particular method. I have a bit more familiarity with the way they operate. They take complaints and information and they have a process of dealing with it. How do you interact? I have read a couple of articles about it.

**Mr Milroy**—In relation to the gentleman concerned, he is quite welcome to respond to the processes that we have served on him to come forward and appear before an examination and, as we indicated earlier, discuss matters relevant to him. But he may not be a very good example. We take the view—

**Senator LUDWIG**—That is why I thought it might be, because it seems to be one that is happening. It is out there, in the sense that there is an issue going on. How you respond to that in terms of this review is what I am interested in.

**Mr Milroy**—The difficulty here is that this is a current operational case and it is a matter in relation to the alleged commission of criminal offences. These people are the subject of services of process for them to come before an examination to enable us to elicit some further information relevant to that case.

Regarding this issue of using the coercive powers, coercive powers are used in a very broad based approach within a special intelligence operation or a special investigation. They are there to actually gather information, intelligence and evidence. They should not be seen as something that is bolted on. We take the view that they are part of the evidence, intelligence and information gathering capability of the ACC.

So we have this internal resource, including examinations. Where we are profiling something—whether it is a case or a particular area of crime that we want to better understand—and we want to research that particular area or profile a particular individual's involvement, we would use the coercive powers tactically as a method of gathering information and more knowledge about the subject matter.

That might mean serving process on an individual. Alternatively, if someone who has significant information about a subject matter but, because of their employment or where they operate, would prefer to provide it in the confidentiality of the hearings, we give them that opportunity. They would come along as a friendly person who wants to come forward and talk about a matter, and they do that within the protection of the coercive hearings. That is compared with a person who in actual fact is involved in alleged criminal offences and who we want to examine in more detail about their potential involvement. The coercive powers are used very broadly and are a very important tool in being able to gather information from a wide range of areas.

**Senator LUDWIG**—I know it is an operational matter, but it is the only one I have as a concrete example. Are the coercive powers working in respect of that matter or is there a problem that you perceive is occurring that needs some recommendation from this committee to deal with?

**Mr Milroy**—At the present moment, there are a number of issues that have come out of the Wickenby case that have been canvassed in the media. Some of those are currently matters before the Federal Court. We have also had some discussions with the Attorney-General's Department in relation to not only that case but a number of other cases in which we have encountered challenges to the ACC's powers. We could probably come back to the committee with a list of the relevant challenges and the problems.

**Senator LUDWIG**—That would be helpful.

**Mr Milroy**—That may be helpful for you. We will liaise with the Attorney-General's Department and produce that for you.

**CHAIR**—That would be of assistance to the committee. I have four additional questions, but I will place three on notice. I will give an indication of what they are and then ask my fourth question in camera. One question on notice relates to the increasing internalisation of organised crime. I want to ask your opinion as to whether you think that the allocation of roles between the AFP and the ACC in relation to international collection and liaison needs to be reconsidered. The committee will submit that to you on notice. A second question relates to coercive powers. The committee would be grateful if you are able to give us a fairly comprehensive indication of how coercive powers are used in practice.

A third question on notice relates to how ACC uses informants. I appreciate that you cannot go into great detail, particularly in an open hearing. But I would be interested to know, within the obvious constraints, whether the ACC has protocols that provide security for the information given by informants and for the informants themselves, and also whether there is a protocol which ensures that as far as possible the information is sound and can be used effectively in prosecutions. I will put those three questions on notice to you, together with any others that Mr Hayes constructs.

*Evidence was then taken in camera but later resumed in public—*

[5.46 pm]

**GRANGER, Ms Jennie, Second Commissioner, Australian Taxation Office**

**MONAGHAN, Mr Michael, Deputy Commissioner, Serious Non-Compliance, Australian Taxation Office**

**CHAIR**—I welcome representatives from the Australian Taxation Office. As you are public servants, you are reminded that you are not required to answer questions relating to policy matters and will be given the opportunity to refer such questions to either the minister or superior officers. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to both of you. I now invite you to make a short introductory statement, after which we will move to a general discussion and questions.

**Ms Granger**—In the interests of time, we thought we would not make a statement. Our submission speaks for itself.

**CHAIR**—Thank you very much for your assistance, Ms Granger. Was the tax office as involved with the NCA investigations as it is now with the ACC?

**Mr Monaghan**—Yes, I believe so. It was before my time in this role, but I believe so.

**Ms Granger**—Before both our times.

**CHAIR**—You think that there is the same level of involvement as there was with the NCA?

**Mr Monaghan**—As I say, I was not there, but from what I am told I believe that would be the case.

**CHAIR**—If you want to make some general inquiries when you go back to the office and if there is any refinement of that answer, we would be happy to hear from you. We would be grateful, in fact, to hear from you. The submission notes that there is an MOU between the ATO and the ACC. How long has that been in existence?

**Mr Monaghan**—I believe it would be a year and half ago that we signed the MOU in relation to Operation Midas. We are currently revising that. It is a reasonably ongoing process to make sure it is current.

**CHAIR**—That is the revision of MOUs?

**Mr Monaghan**—Yes.

**CHAIR**—Does that come about as a result of new cases coming to the fore and requiring such revision?

**Mr Monaghan**—It comes from the maturing of the relationship and an understanding of how we can more effectively work together and how we can manage our matters more cooperatively. So we are working more in partnership on relevant tax matters and we are starting to manage some of those matters at a task force level. The MOU has just been revised to reflect some of that approach. Of course, officers change as well, in terms of contacts and paths of information exchange and things like that.

**CHAIR**—The ACC has considerable coercive powers. Have these been used in joint matters with the ATO and the ACC, and does the availability of these powers provide the ATO with support that it would otherwise lack?

**Ms Granger**—Yes, it does. We believe that in the most serious of matters, where there is a criminal element to it, that dimension is very important, particularly where there are very systematic attempts to disguise what is going on.

**CHAIR**—It has also been suggested that the tax commissioner should be included in the membership of the ACC board. What benefits would accrue to the ATO if this were to occur?

**Ms Granger**—Ultimately that is not a decision for us. We are able to fully participate in the matters for which we have a prime interest, which are to do with the investigation of tax fraud. That is at both an operational level and a leadership level. For example, in one that I know you have some interest in, Operation Wickenby, the commissioner was personally involved in developing the approach. We participate in and support the process to the extent that we want to, so it is not going to make a difference from our perspective.

**CHAIR**—So that particular move would be supported by the ATO.

**Ms Granger**—I am basically saying that we are neutral on that. From our perspective we do already have the engagement we need in relation to tax matters. That is both at the operational level and in leadership involvement as we need it.

**Mr KERR**—I am trying to work through how you disaggregate your relationship with the Australian Federal Police and the Australian Crime Commission. There are special investigations which are conducted under the ACC umbrella, there is more general remission of matters for investigation, I imagine, to the AFP and then you have your own internal investigations. I suppose there are three tiers. Perhaps they operate in parallel or perhaps they overlap. I am curious to work out how you disaggregate them or whether you do—how you operate.

**Ms Granger**—The ones where we are involved with the ACC are at the most serious end of the spectrum, from our perspective. They are criminal in nature and they need the kinds of powers that the ACC has. We definitely need a multi-agency approach to those. As you indicated, we also deal with a range of more common frauds. There is a more routine aspect to that. There are many matters that we deal with civilly, under our own powers, as well. So it is a question of the degree of risk to the system that takes it further.

**Mr KERR**—So the hierarchy is: internal investigation, AFP, Australian Crime Commission?

**Mr Monaghan**—It is not quite that straightforward. It is a very cooperative relationship. We would normally refer to the AFP matters where our investigators believe that there is potential criminal conduct. There will be discussion then about whether the AFP is the right organisation or whether, given the nature of the matter, it is more an ACC case. As Ms Granger said, that turns around the elements of seriousness to do with systemic, organised matters that have a high impact on the system. Certainly once we form a view that there is potential criminal conduct then we contact the AFP. We also work with the state police on matters as well.

**Ms Granger**—Mr Monaghan comes from what we call our Serious Non-Compliance area. They are dealing with the stronger risks to the system, from the tax office perspective. We also have in-house prosecution capacity, which you asked about before. On much more routine matters, such as the non-lodgment of tax returns, which are relatively straightforward, we use our in-house prosecutors.

**Mr KERR**—What about the recoveries? I am aware that in the former NCA and currently, with Operation Midas, there was a focus on recoveries. The attitude was: ‘How much do we get for this effort?’ Is that a matter that can be easily identified or is it difficult to abstract that out from the generality of your recoveries? Is it possible to identify what you get that you would not have got but for the add-on capacity of the Australian Crime Commission/NCA?

**Ms Granger**—In general terms, the way we measure our results is around the liabilities we have raised—the adjustments we have made to assessments. Yes, it can be difficult to identify what are the effects beyond that. Some of the obvious direct effects of involvement in this, as reported in the ACC annual report, are not only tax adjustments but also convictions, custodial sentences et cetera. I suspect you are asking: how do you quantify the deterrent effect? That is very difficult to quantify. However, we do know that it has a significant impact on public confidence if we are not seen to firmly address this kind of behaviour. We cannot give you a precise measurement of that.

**Mr Monaghan**—There are two new elements. One is proceeds of crime. The commissioner has made it clear that, whilst his prime focus is on the administration of the tax act and getting revenue, there are some situations where proceeds of crime is an appropriate remedy, as are prosecution and conviction. We do work with the AFP and the ACC in proceeds matters and provide our financial skills to assist that process. Additional tax revenue is one impact; proceeds of crime is another. The convictions aspect is also not to be understated, because there is undoubtedly a higher proportion of people convicted of tax fraud now getting prison sentences than was the case even a year ago. We believe, both from our own surveying of the community and from what you hear through professional circles, that that is having a really big impact on people’s preparedness to step over the line. It is one thing to have to pay some money back; going to jail is a completely different ball game. So these are some very important impacts regarding the sort of relationship we have.

**Mr KERR**—With the deterrent effect, do you have access to AUSTRAC and the intelligence capacity that they have, or is that a problematic area?

**Ms Granger**—We have access to AUSTRAC analysis.

**Mr KERR**—Historically, there was a view that if a person paid their tax liabilities the ATO's obligations regarding confidentiality were such that there would be no exchange of information beyond the office. I know that has been an issue that has sometimes emerged in more recent times. How do you address that more historic position in terms of your exchange of information back? Obviously, you draw on ACC and the AFP when you have inquiries where people are failing to discharge their obligations, but assuming that somebody is discharging their obligations and disclosing tax liabilities which involve conduct of criminal enterprise, how is that dealt with at the moment?

**Mr Monaghan**—The deterrent effect, in terms of people abusing the whole system, is served by not only the collection of the revenue owing but also potentially a criminal prosecution if need be. Obviously, there are a lot of checks and balances around the exchange of information between agencies. Our view is that we need to look at the overall tax mischief and at the best strategy for dealing with that. If the exchange of information with a law enforcement agency furthers that outcome, we believe it is appropriate in those sorts of situations to exchange information. It is quite a controlled process, though. Probably because of things like proceeds of crime and the deterrence effect of prosecutions, we are seeing that the overall health of the tax system is served by taking a broader approach in those particular situations. We are only talking about right at the top end of the worst of the behaviour.

**Mr KERR**—I don't quite understand that answer. I am not trying to be tricky here. I think there are good public policy reasons that underlie the historic unwillingness of Tax to disclose the commission of offences when persons made true and accurate reportage of their tax liabilities to the tax officials. But that must be a much blurrier position now. I am wondering exactly how those issues are dealt with. Hypothetical person A discloses that they run an illegal brothel. Hypothetical person B discloses that they are involved in the rebirthing of cars. They both disclose their tax in what appears to be a full and frank way. How do you deal with those things?

**Mr Monaghan**—Section 3E of the Taxation Administration Act allows for the provision of information which is relevant to establishing a serious offence. There are some restrictions around how that can be used but that is a provision that is there to enable us, if we come across this sort of evidence, to provide it to the appropriate law enforcement authority.

**Mr KERR**—Tax documents themselves are not admissible as evidence against a person—is that right? Does the obligation to pay your tax require you to incriminate?

**Mr Monaghan**—Whether the income is legal or illegal, the requirement is that you declare your income. I am not sure exactly how the admission into evidence would work, but I would imagine there would be processes whereby the law enforcement agency could require production under its powers from a particular taxpayer of tax return information, and use that. I am not sure exactly where that process would go.

**Mr KERR**—I am trying to tease this out. In many ways I see this as entirely beneficial—good relationships between the ATO, the Australian Crime Commission and the AFP. But I am also trying to tease out whether we have some unintended consequences—some things which we need to address as a consequence of those changed relationships, given the policy historically that used to underlie the tax law. In fact, up to a decade ago, essentially, I know there was almost a complete prohibition on the release of information if a person made full disclosure. It was

basically the case that, if a person disclosed, they discharged their responsibility to the ATO, full stop. I am not sure where we have got to, but if the accidental outcome is that the taxpaying but otherwise lawbreaking citizen is not going to pay their tax because they would then make admissions that are admissible against them, or is paying their tax and is thereby exposed under compulsion of law, it is another issue that we have to consider. It is just not something that is considered very often. I am interested in that intersection because it raises public policy issues which I think have been blurred and not looked at.

**Ms Granger**—We might need to take that on notice and come back to you. I am not aware of a set of circumstances like the ones you have outlined.

**Mr KERR**—I don't know how many law abiding, taxpaying crooks there are. I suspect there are not many. I suspect that most people in the black economy don't report their taxable earnings to you. Therefore, they are both tax cheats and criminals. I wanted to explore this matter because obviously these relationships have changed what you do as well as what the agencies do.

**Ms Granger**—The question that you are interested in relates to the implications for the use of the information that they have disclosed to us?

**Mr KERR**—A perfect example is an illegal brothel owner. It is now lawful in some states, but in my state of Tasmania they are just about to recriminalise operating a brothel. The illegal brothel owner pays their tax. Is that matter then reported to the state authorities so that tax statements can be used as documents going to proof of the criminal offence? They are the sort of people who may well pay their tax on a proper basis because they are actually running a business. You can see it more or less in a number of other areas where we have these sorts of semi-tolerance situations. A person involved in serious and organised drug dealing is unlikely to be reporting their full earnings to the tax office but there may be areas like this. I think it is a complexity, particularly given that the interface between law enforcement and your office has changed, so I would like to know a little more about it.

**Mr Monaghan**—Section 3E is the main provision. Perhaps we could set out what the particular provisions enable us to do, if we came across that information. A serious offence is defined in the section. So clearly it would have to be relevant to a tax related matter or be allowed under the law, be it section 16 or section 3E. We could set out what those provisions enable us to do in that sort of situation.

**Mr KERR**—Not only what they enable you to do but what you do do.

**Mr Monaghan**—Yes.

**Mr KERR**—Because sometimes what one is enabled to do is not what one does. What about the situation with internal fraud? The fraud policy of the Commonwealth has a series of steps for internal fraud management and then there are requirements to report to the AFP. There would be no agency of the Commonwealth that would be more vulnerable potentially to internal fraud than the ATO. Does that intersect with anything that the ACC does or does that come entirely under the Australian Federal Police in terms of your own implementation of the fraud policy?

**Ms Granger**—The internal fraud area does not come within my area. There are matters that have an external and internal aspect to them, and that is looked at. I am not sure whether that has involved the ACC.

**Mr Monaghan**—The answer would be the same as for the first one. If it was a serious matter in terms of being systemic and organised, and happened to involve an internal element, it is likely that the ACC would take the lead. If it was a one-off or individual situation, it may be that the AFP would take the lead. It is not in my area either, but I think we would involve the AFP in any matter where we thought an investigation was required.

**Mr RICHARDSON**—The ATO provides secondees to the ACC. Are the secondees employed by the ACC on ACC terms and conditions or do they remain subject to the terms and conditions of their ATO employment? Are they subject to the same integrity testing? I also noted in your submission that there are five secondees that are paid by the ACC. Are they in permanent employment with the ATO or are they on secondment?

**Mr Monaghan**—They are ATO employees who are in effect authorised to work at the ACC on tax related matters with the ACC. They are not special constables or anything like that, so they are still ATO employees. They tend to work there for different periods of time. Some have been there for a few years but others might go for a particular operation that is under way. We provide some guidance to them about things they need to be careful of in terms of still being an ATO officer, but they are authorised under a determination of the ACC to work at the ACC.

**Mr RICHARDSON**—How are those people who are on secondment referred to the ACC for that secondment, having regard to their integrity and character?

**Mr Monaghan**—They have highly protected clearance through the ACC. Many of my officers are highly protected already under the ATO highly protected process but they go through an additional ACC process.

**Mr RICHARDSON**—I have one final question, and it is in the same vein. Are there management systems which allow performance of secondees to be assessed consistently across the two agencies? This was a concern noted by the Ombudsman in his submission.

**Mr Monaghan**—Those systems are not quite as good as I would like them to be. We have actually been discussing that very issue in recent times about how we get a better understanding that they are working at the right level at which they are able to contribute and what the relativity is to the work they would be doing back in the ATO. There are processes there but I could not say that they are quite as good as I would like them to be.

**Mr RICHARDSON**—Thank you for your honesty.

**CHAIR**—You would have noted that that concern had been expressed by the Ombudsman.

**Mr Monaghan**—No, I was not aware of that.

**CHAIR**—It is probably worth looking at.

**Mrs GASH**—With regard to international intelligence matters, where do you get your information from, particularly for tax issues?

**Ms Granger**—In general?

**Mrs GASH**—Yes.

**Ms Granger**—There are a range of sources, obviously from our own investigations, audit work we do, analysis in our risk assessment processes and AUSTRAC information. We do ourselves have double tax agreements with other jurisdictions, and information can be supplied under those by request. During the general course of conducting our investigations, it is necessary to do that analysis.

**Mrs GASH**—With regard to international sources, who would you—

**Ms Granger**—With other tax administrations, we have tax treaties, if you like. They are government-to-government treaties in relation to tax administration. They have specific provisions in them for exchange of information with treaty partners under specific rules internationally for those purposes. That is for administrative purposes.

**Mrs Gash**—Just going on from what Kym was saying earlier, do the ACC staff also undertake secondments with the tax office? I was not quite sure about that.

**Mr Monaghan**—Not to my knowledge, no.

**Mrs GASH**—Is there a reason why not?

**Mr Monaghan**—No. Probably I just have not got to it. We do have AFP officers posted in the ATO. I have had discussions with the ACC about potentially having an officer placed in the ATO for a while as a broadening experience. We have ASIC officers working on interchange. There is no particular reason other than I just have not got around to organising it.

**Mrs GASH**—So it is something that you would look at?

**Mr Monaghan**—Yes.

**Ms Granger**—We would be very keen to do that, not just with the ACC but with a number of agencies. Even within our own organisation, we find that moving people around so they see different aspects of our work and get exposure to different expertise is really beneficial in dealing with matters so we would encourage it. But we do need to be mindful that we are a very big organisation dealing with organisations that have a much more limited number of staff and expertise than us. So we have to bear that in mind in terms of what is practical for them.

**Mrs GASH**—Would there be any benefits if the Tax Commissioner were included in the membership of the ACC board?

**Ms Granger**—As I mentioned previously, from our perspective we are able to participate and get the support we need in relation to tax matters both at the operational level but also at

leadership level, and that has included on occasion the commissioner himself being personally involved with Mr Milroy and others in relation to matters.

**Mrs GASH**—But not as a member of the ACC board.

**Ms Granger**—We have not needed to be on the board to be able to have that participation, so we are neutral on that.

**Senator LUDWIG**—There is one issue I want to raise which I raised with the ACC as well. It is really more about a concrete example, because what this review is also about is looking at how effectively everything works. I know Operation Wickenby is a current operation so there is only a certain amount of help you might be able to give me, but I am interested more with the procedures and processes. Are you satisfied, firstly, with the way the ACC is handling it—it is a joint investigation, as I understand it; and, secondly, with the way you delineate whether you will do an internal investigation yourself or whether you will hand it over to the ACC or the AFP? What steps do you use to determine that, because both of them could potentially be the recipient of the reference or the request for assistance?

**Ms Granger**—I will ask Mr Monaghan to take you through the steps. As an overall statement, we have been very pleased with the level of cooperation we have had from all the agencies and the ACC taking the lead in relation to this matter. Obviously as we further analyse what we have we will need to work through the process—and we already are—of what we will be handling ourselves civilly and the more serious matters which of course are being led by the ACC in relation to criminal aspects of this.

**Senator LUDWIG**—That is in relation to Operation Wickenby?

**Ms Granger**—Yes. Mr Monaghan could take you through some more detail.

**Senator LUDWIG**—Before we go to Mr Monaghan, there was a matter that was raised by me and answered by the ACC where they indicated there were a couple of issues which they were then going to examine further in relation to their use of coercive powers. I think they said there had been a number of Federal Court decisions that surrounded that. I think you were in the room when I asked that question. Do they come back and interest you, in the sense of whether you made the appropriate decisions to refer them on or whether they impact upon the way you would investigate—those sorts of issues? In other words, do you have an interest in what they are now looking at as well?

**Mr Monaghan**—We do have an interest because they go to the effectiveness of a working relationship that is important to us. In terms of whether we involve the ACC or the AFP, as I said earlier that is a pretty collaborative decision between the agencies as to who is the right lead agency. Sometimes the ACC will say, ‘Well, it is not really us,’ and refer it back to the AFP, and vice versa. In terms of those Federal Court decisions on the ACC’s powers, we have a strong interest in those issues because they affect the effectiveness of the relationship. I am in almost daily discussions with the ACC and we do discuss the impact of those sorts of things. I guess the nature of dealing with tax fraud means that you will get challenges to powers and process, and that is just something which you have got to work through.

**Senator LUDWIG**—Do you see that there is a requirement to amend or change the use of coercive powers in light of Operation Wickenby and the results that have come up during those Federal Court cases? Do you make a submission to ACC about that or say: ‘Look, in terms of how that power has been utilised, we think the Federal Court might be right—or wrong, or there is a gap—and this would be helpful’?

**Mr Monaghan**—Our normal answer is: policy matters are a matter for government. If we thought there was an issue certainly we would raise it with the Treasury, who are our policy agency, and with the Treasurer.

**Senator LUDWIG**—Have you raised any?

**Mr Monaghan**—That is something we cannot really comment on.

**Senator LUDWIG**—I can ask you: have you made any submissions about Operation Wickenby? Whether you can answer that or not is another question, but I can ask you that in relation to the use of coercive powers.

**Mr Monaghan**—We are not able to comment on our advice to government.

**Ms Granger**—The other thing we can say is that we believe an effective coercive power the ACC obviously have is an important dimension to what they can bring to criminal investigation—and we have said that in our submission.

**Senator LUDWIG**—That is what prompted me to ask that series of questions.

**Ms Granger**—We do believe it is important to being able to deal with the most difficult end of this.

**Senator LUDWIG**—In terms of the output from the use of coercive powers—it is intelligence that is also helpful—how much is returned to the taxation department, which in other words you might follow up with further investigations or other issues? Is that how it works as far as you are concerned?

**Mr Monaghan**—Yes. If it is a criminal investigation then it is dealt with by the ACC or the AFP with our assistance. Matters are referred back to the ATO for the raising of tax assessments. Obviously, as people have said, people who might have indulged in criminal behaviour may still have income that has not been assessed, so they would provide the information under the powers of their act to us to enable us to exercise the functions of our administration.

**Senator LUDWIG**—So that would be matters where the use of coercive powers was utilised and answers were given. Some of the answers might relate back to tax issues that are then passed back to you. You might then subsequently investigate that for the nonpayment of tax, for argument’s sake. Have I got that right?

**Mr Monaghan**—There are limits on the use of that information in criminal proceedings in the ACC’s legislation but, in relation to raising tax assessments, information might be disseminated to us to enable us to raise assessments.

**CHAIR**—Thank you for appearing before the committee and for your assistance and advice. We look forward to receiving some further elaboration on some answers to questions from the committee.

[6.21 pm]

**BRIDSON, Ms Heather, Acting Director, Inspections Team, Commonwealth Ombudsman**

**BROWN, Ms Vicki, Senior Assistant Ombudsman, Law Enforcement, Commonwealth Ombudsman**

**McMILLAN, Professor John, Commonwealth Ombudsman**

**CHAIR**—Welcome. Thank you for being with us today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to make a short introductory statement after which we will move to some general questions and discussion.

**Prof. McMillan**—Thank you for the opportunity to appear. As our written submission to the committee indicates, the Ombudsman has three different roles in relation to the Australian Crime Commission, so they cover a broad area but there is limited activity. We investigate complaints that are made about the commission—only 12 were received in the last year; six in the previous year. We also initiate investigations into matters: sometimes concerning the commission; sometimes matters that have been proactively notified by the commission to the Ombudsman's office. There were three such own-motion inquiries last year. We also have the inspection function on which we report separately to this committee once each year.

As our submission indicates, we have a strong and open working relationship with the Crime Commission. They have always been responsive to issues we have raised and recommendations we have made. This is one area where there could be developments over time. There has, as the committee would be aware, been discussion about putting both the Australian Federal Police and the Crime Commission on the same jurisdictional basis in relation to the Ombudsman's office. There has also been discussion about creation at the federal level of a new federal oversight body for major corruption. Developments of that kind, if adopted by the government, could have implications—at least at the margin—for the way in which this oversight role is conducted.

Otherwise, our submission draws attention to only two other areas of concern that we have raised with this committee on previous occasions. One is the difficulties that can arise for the commission by reason that it is a hybrid body and much of its operational staff are seconded from state agencies. The other is that the commission now operates in an integrated cross-border law enforcement environment and many of its operations are conducted by staff from different jurisdictions and the commission itself relies upon the legislation of the different jurisdictions for statutory authority for its operations. That mainly affects the oversight function and the difficulty of an Ombudsman with a single Commonwealth jurisdictional basis undertaking oversight of activities that can occur on a cross-jurisdictional statutory basis. I will leave my opening submission on that basis.

**CHAIR**—Thank you. In fact, I want to turn to one of the two issues that you have raised, and that is the issue of secondees, which you have just mentioned. Currently secondees are subject to

the disciplinary and integrity regimes of both the ACC and their home agency. Is this duplication a strength or a weakness from your point of view?

**Prof. McMillan**—We have not been directly involved in issues to do with the personnel management, control or discipline of the secondees or staff of the commission. I will give an example. In one of the own-motion reports referred to in the submission that became a fairly high-profile public issue about the conduct of two state secondees to the commission, against whom allegations of corruption had been made, one of our findings in our own-motion investigation was that the commission, as well as investigating how those events occurred, should also look closely at the activities of the commission staff who had been supervising these two officers. As it transpired, two of the staff who had been in a supervisory position moved back to state offices. The commission responded to our recommendation by saying that the commission had transferred the response follow-up responsibility back to the state police forces. As for the third person, the commission said that the person was still a Commonwealth employee and it would require a response from that employee, as it did. But, at that stage, we felt that, since the Ombudsman's jurisdiction generally does not extend to personnel management matters, it was appropriate for us to leave that with the commission.

That is a long-winded way of saying that we have no comment other than to say that, from our own experience, referring issues of a personnel matter has been a more complex process with the commission than it has been in other areas. The committee might be aware, for example, that as a result of a report we published last week in a similar fashion we referred to the head of the immigration department issues about whether disciplinary proceedings should be taken against three officers of the immigration department. That was a much more streamlined referral process than the experience we had with the commission.

**CHAIR**—Professor McMillan, despite those qualifying comments in relation to your views about the issue of secondees, have you formed any views—tentative though they may be—as to how the ACC might develop a secondment policy which would address the issues of secondees that you have mentioned?

**Prof. McMillan**—The commission responded to our earlier inquiry by saying that it had developed a proper integrity framework for dealing with that issue and for management of secondees. Again, with our limited experience in the area, we felt that the commission had addressed that issue at least to our satisfaction and we did not take the issue further. One of the other issues we have seen with secondees is in relation to our inspection role. One of our tasks in the inspection role is to ensure that documentation is signed and recorded and files are closed. Some of the deficiencies to which we have pointed arose from the fact that the person who did not close the file was a secondee who had moved back to a state police force. The commission said that that was not a justification, but it is an explanation as to why the record keeping requirements have not been followed strictly.

**CHAIR**—The second issue you raise in your submission regarding accountability is the limitations imposed on your ability to oversee the ACC's access to cross-border law enforcement powers. Can you give some examples of the consequences of not having such powers, and is there any short-term solution pending some agreement between the states and the Commonwealth?

**Prof. McMillan**—The main consequence of not having that jurisdiction was simply that we were not in a position to give a report to this committee consistent with the underlying principle of the reporting function. In an earlier report I gave to this committee, I think we reported on two controlled operations when the commission had performed more than 10—about a dozen—in that year. Part of our reporting role was to give some degree of information and reassurance to this committee that the commission was complying with its statutory requirements, and we were simply unable to do that. We took the issue up then by doing an own motion investigation. It turned out that the commission, when it was acting under state legislation, was performing at the same high record keeping compliance level as it was when it was operating under Commonwealth legislation. In our experience there has been no practical shortcoming, but, as I say, in terms of the accountability objectives, we were not in any position to give the reassurance that the statute anticipated.

**Mr KERR**—By that you mean that each regime was properly followed but the more comprehensive Commonwealth regime was not followed in respect of New South Wales matters.

**Prof. McMillan**—Yes. That is a crisper way of saying it.

**Mr KERR**—When I read your report this afternoon that is what I thought you said. Under the ACC Act the examiners have significant powers. Do you look at the operations of those examinations with a view to their role or how that is exercised and whether it is done with sufficient accountability?

**Prof. McMillan**—Early on in the life of the commission I met with the recently appointed examiners to receive a briefing on what their role is. To the best of my knowledge, we have not received any complaint arising directly from the conduct of the examination process. I suppose there should be jurisdiction over that process. There can be nice issues about what applies when somebody with the degree of experience in that atmosphere of confidentiality is conducting an examination. The examinations are probably our closest approximation to a grand jury type of process, so there are difficult issues about how the Ombudsman oversees it. But it is a process that is subject to our oversight. My guess is that it is probably one of those areas where people appearing before the examiners, if they have any concerns, are more likely to seek legal advice and consider raising questions in a court rather than before an ombudsman.

**Mr KERR**—I think that largely, although not exclusively, it is our experience that people who appear do have legal representation. Not everybody does, but it is quite common. One of the issues that we are grappling with is whether the examiners should have the power to punish contempts. From what you are saying, you have not really been looking at the examiners' role. Are there any views that you have on that?

**Prof. McMillan**—No, I am not in a position to express any view on that.

**Mr RICHARDSON**—In the NCA days, through evidence we have heard, the original NCA format—that is, the format of the board structure—was the solicitor or lawyer club. Now it is the police club. Are you specifically seeing any evidence that the structural change to an organisation led by police is leading to a leakage of the ACC's coercive powers into more routine policing matters?

**Prof. McMillan**—No, we have not seen any evidence of that. We do receive bare details of controlled operations that have been undertaken by the commission. I am obviously aware of some of the more high profile investigations that have been reported in the media. I suppose I have been struck, from the private and public briefing, about some of the large and sensitive issues that are taken up by the commission. But that is an anecdotal impression only.

**Mr RICHARDSON**—With the organisational structures—the one you have seen in the old NCA versus the new ACC format—would you say that the ACC format is far better at this stage?

**Prof. McMillan**—I have only had direct experience as Ombudsman during the ACC days. I am aware, again from discussion, of some of the difficulties and bristling that occurred in the former days of the NCA. I would have to say that I have been impressed by the open and responsive relationship I have had with the ACC on aspects of its activities.

**Mr RICHARDSON**—You also suggested that section 55AA of the act be amended to allow you to brief the PJC more fully on the work of the ACC. What other aspects of the ACC's performance would you see being included in an expanded inspection and reporting framework?

**Prof. McMillan**—It is simply that in our annual meeting with the parliamentary joint committee we could comment upon any complaints that we had received and any own motion investigations we have undertaken. In fact, that has tended to occur in practice. The inspection oversight role that we perform, while I think it is a critically important one, is a very resource-intensive role and it also tends to be a very technical role. It has not sparked lively discussion in the annual meetings with the parliamentary joint committee. We have often discussed some of those other aspects of our role that do not formally come within our reporting obligation. So to some extent I am proposing that we formalise what has been occurring informally.

**Mr KERR**—I suppose that your actual obligations to report on certain things is limited. You do not, for example, supervise the relationship between the agency and informants or the storage of seized evidence and the like, I think, if I am correct?

**Prof. McMillan**—That is correct—we do not.

**Mr KERR**—They are the areas where historically problems have emerged in terms of ethical concerns regarding the functioning of state police forces and the like. Do you think one of the things that we might be wise to recommend, or to at least look at, is an oversight of those particular aspects and perhaps others that you might have to mind? You might say, 'No, none of that is appropriate for the ombudsman.' The ones that stand out that think have caused problems in other jurisdictions are management of informants and storage of seized items, particularly evidence and often drugs.

**Prof. McMillan**—If I could start in a roundabout way, one of the difficulties that we have faced in our role in oversighting law enforcement is that we do it under two different acts—the Complaints (AFP) Act and the Ombudsman Act, under which we oversight the ACC. That has led, because of the requirements of the complaints act, to an oversight of law enforcement that it seems to me is artificially divided. The Fisher report on the complaints act proposed that the ombudsman's oversight jurisdiction be located in one act and probably that it be an oversight jurisdiction comparable to the jurisdiction you have in other areas—that is, that we just look at

complaints and do own motions. I am in support of that, and I think that, if that were to occur, and I know that it is under discussion at the moment, I would see my office trying to develop its law enforcement oversight role in a more coherent and planned way.

An obvious way to do that would be to pick some topics for own motion investigations occasionally like management of exhibits, dealing with informers and so on. The New South Wales Ombudsman's office is a good model in this respect. They have a large role in overseeing police and a very active program of trying to set the agenda and pick the topics on which to report. That is the position my office is now in in relation to immigration. We formerly just had a complaint handling role but, as a result of foreshadowed legislative changes and a substantial new budgetary increase, we are developing a quite different oversight function in which complaint handling will be one element only and we will be much more active in looking at compliance activity, arranging our own kind of audit inspections and other periodic oversight activities. I envisage that properly resourced and in a coherent way we could do that in relation to all aspects of Commonwealth policing.

**CHAIR**—The committee is aware that legislation will soon be introduced to create the proposed Australian commission for law enforcement integrity. How would you describe the relationship between your organisation and that commission, especially in relation to matters such as complaint handling?

**Prof. McMillan**—Much will depend upon the detail of any legislation and the proposals of the commission itself. But once again I generally welcome a development of that kind. My own office is really not well placed to investigate major corruption. We do not have the kind of skills that are required. Victoria is a good example—when they tried to give that function to the ombudsman it had to be created as two separate offices with a whole range of difficult practical issues to address. I think if a commission of this kind is created to look at major corruption it will be sensible for the commission and the ombudsman to sit down and work out a sensible division. Sometimes it is called major corruption and minor corruption, and sometimes it is called corruption and complaint handling. There is clearly an overlap, and operational incidents are sometimes linked to larger corruption. But clearly it would be sensible to have two bodies operating alongside each other but with some cooperation.

**CHAIR**—Will the Commonwealth Ombudsman have any oversight role in relation to the commission's use of its special powers?

**Prof. McMillan**—All I can say is that we will have to wait and see what the detail of any legislation is.

**CHAIR**—Have you made submissions to that effect?

**Prof. McMillan**—At a very early stage, in informal discussions, there was some discussion that the Ombudsman could oversight the commission's complaint handling and the commission could oversight whether the Ombudsman was looking at minor corruption only. My view is that it is best not to have oversight bodies overseeing each other: it is best to have them operating alongside and just transferring.

**Mr KERR**—I can see you suing each other!

**Prof. McMillan**—Yes.

**Mr KERR**—That would be fun.

**Prof. McMillan**—You very quickly get complaints about complaints that lead to litigation.

**CHAIR**—Thank you for your attendance today and for your assistance and advice to the committee.

[6.46 pm]

**WOODWARD, Mr Lionel Barrie, Chief Executive Officer, Australian Customs Service**

**CHAIR**—Welcome. As you are a public servant, you are reminded that you are not required to answer questions relating to policy matters and will be given the opportunity to refer such questions either to the minister or to superior officers. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to make a short introductory statement, after which we will move to a general discussion and question session. I again thank you for your patience and consideration in waiting for us.

**Mr Woodward**—I have no opening or introductory statement. I am happy to go straight to questions.

**CHAIR**—Thank you. The ACC structure is quite different from that of its predecessor. In particular, it involves state and federal police in governance in a way the NCA did not. Do you think that this change in governance has assisted the ACC in its investigative and intelligence gathering role?

**Mr Woodward**—I think it probably has. I had some involvement with the NCA previously. I have to say that there were occasional tensions between the NCA and state bodies—not just the state police, but crime commissions and their equivalents, the AFP and even occasionally Customs. I think that with the board comprised as it is—and I know that there are suggestions that it could be changed in at least one respect—the requirement for the state police commissioners and a small band of Commonwealth officials to sit around a table and talk about things like priorities, strategies and where we are going, to debate and reach an agreement, has been very profitable. I was, I admit, unsure as to how it would work. I think it has been a success.

**CHAIR**—How would you characterise the nature of the ACC-Customs relationship?

**Mr Woodward**—I think the relationship is sound. It is professional and it occurs at all levels. I am a member of the board, so obviously I have a lot of contact with the board and, through that, with the chairman of the board and the CEO.

Personally, I have a lot of contact with the CEO where we are able to talk quite frankly about the relationship, the way in which it is working and, from time to time, operations. It occurs at a senior management level in Canberra. My senior people deal infrequently with counterparts in the ACC and, possibly most significantly, interaction occurs at a regional operational level, where there in many cases is daily contact, and we have people working in the ACC. My view is that it is sound, it is professional and it works. Of course, there are tensions from time to time, but we have structures that deal with that.

**CHAIR**—Does it appear to you that the ACC is sufficiently well resourced to undertake investigation of intelligence gathering, and how big is the task relative to resources available?

**Mr Woodward**—It is very difficult for me to pass anything other than very much a generalised assessment. The impression I get from the board level, from what I am told by the CEO and what the board is told by the CEO is that the resources are adequate to the extent that there are potential conflicts. Like any organisation, you have to look at priorities and work out what you can and cannot do with the resources you have got. You employ task force mechanisms and see if you can get capacity in from other organisations, including Customs, and you manage. The impression I have is that the ACC manages pretty well with the resources that it has got, and I do not have an impression that it is being starved.

**CHAIR**—That is reassuring. Are you aware of any limits to the effectiveness of the ACC Act? Is there an undue reliance on the personnel and funding of police partners?

**Mr Woodward**—That is not the impression that I have, but I have to say that the CEO and the chairman, who are closer to some of that and some of the negotiations that take place with the state forces, would be better equipped than I am to answer that question.

**Senator LUDWIG**—The use that the ACC have of coercive powers, is that an area which you utilise?

**Mr Woodward**—Yes, we do, but in the sense that we have the ability to be present at some of those examinations where there are major Customs issues involved. There is the opportunity for product to be flowed from that process to us, so we find it is useful but there has to be a direct relationship between legitimate Customs concerns and examinations that are in process. We also have mechanisms in a related area and, because we do not have telephone intercept powers, there is a way in which we are able to get access to relevant, important product from that process as well, so we are beneficiaries of that process.

**Senator LUDWIG**—I see. Do you end up with a joint operation where the coercive powers are used?

**Mr Woodward**—In the end there could be coercive powers used, but we are involved in many joint operations with the ACC, as we are with the AFP and with state police forces. The way in which we divide it up is: we know what the ACC's powers are, including what the coercive powers might be, what capacity it has got and the telephone intercept capabilities, and they know what we can do, which is: there is no organisation that is better equipped to provide information in relation to cargo, in relation to passengers, to provide some of the drug detection equipment like ISCAN, the chemical detection equipment and some of our explosives, so it is working off each other. There are a significant number of joint operations to our mutual benefit.

**Senator LUDWIG**—You may not be aware of it but there is a subsidiary issue in terms of Wickenby between Wickenby, Tax and ACC, which is an operational matter and I will not go into it. What it did throw up was a range of issues that were aired in the Federal Court about the use of coercive powers and the extent of the coercive powers. You would expect litigation like that to arise in cases such as that.

In terms of impact upon Customs, have you looked at whether any of those need to be addressed? I want to know if you have looked at whether the current coercive powers that the

ACC have suit your needs. You may have looked at whether they were on the one hand deficient or on the other hand excellent in that operation or in some other cases that have come to light.

**Mr Woodward**—Frankly, I have worked on the basis that the powers are there; we use them to the best of our ability. We have not immersed ourselves in the legal or powers issues in a way in which, either as a board member or as head of Customs, I could have suggested constructive changes. I think those who are closer to it are in a far better position to put a view than me.

**Senator LUDWIG**—I was just trying to find out whether they had had an impact on Customs at this point or whether you recognise that there may have been an impact on Customs.

**Mr Woodward**—If there was, I would certainly say that, but I am not aware of any deficiencies that have adversely impacted on us.

**Senator LUDWIG**—With respect to a criminal matter that is raised, how do you determine whether you would send the matter to the ACC or the AFP?

**Mr Woodward**—How do you decide whether it is an AFP matter?

**Senator LUDWIG**—Yes.

**Mr Woodward**—Sometimes it is determined for us, because the AFP approaches in relation to a particular exercise. In some cases it could be very much a related operation whereby the ACC would come to us and we would work with them. Sometimes—on many occasions—it is both. Sometimes there are state police forces as well that we work with. There is not that dark line between each of the organisations.

**Senator LUDWIG**—In trying to find that dark line, although I understand it is more of a grey line, in the last 12 months have you referred matters to the ACC or have matters come down from the board as a reference to the ACC which would then require Customs—

**Mr Woodward**—There may well have been issues. I do not personally know of any. Most of the involvement comes from two directions: there is an ACC board consideration of a decision to set up a special intelligence operation or to conduct an investigation; or ACC, through a whole series of mechanisms, begins to undertake work and then comes to us. I cannot recall examples—although there may well be some—where we have gone to the ACC and said, ‘Can you help us?’ Our more traditional approach, because most of those would be one-offs, would be more to the AFP directly, or to a state police force, depending on the nature of the offence.

**Senator LUDWIG**—Have you reflected upon whether the ACC is fulfilling the requirements that you have? That is why I asked the preceding question—to see whether you were referring matters to the ACC. It seems that you are not, but in terms of meeting your objectives in prosecuting or dealing with importation breaches and the like, have you made an assessment as to whether ACC is meeting your requirements in terms of law enforcement—border protection?

**Mr Woodward**—I think it is. I realise from time to time there are views expressed that the ACC is an unnecessary encumbrance to law enforcement. I have not found that. I have found it to be a very useful organisation. The work that it does is productive. It complements the role of

the AFP. To have an organisation such as that, with the powers that it has, I think enhances national law enforcement rather than detracts from it.

**CHAIR**—Mr Woodward, what is your observation of the allocation of roles between the ACC board, the board chairman and the CEO?

**Mr Woodward**—I found it interesting when I first read the legislation and then became a board member working out just how it would work. In fact, it has worked in practice. There is obviously an interplay between the roles. Again, there is no firm line. While the CEO does not have a voting ability at board meetings, he is there and he has the opportunity to play a significant part. In fact, quite often the introduction is done by the CEO rather than the chairman. I think it does work, and there are other components to it—which I note some people have commented on—the fact that there is a PJC and an IGC and how they all interrelate. It is very complex but, from where I sit, it seems to work.

**CHAIR**—Are you aware, from a Customs perspective, of any significant or emerging issues in the organised crime environment?

**Mr Woodward**—Obviously there are many and we contribute through the priorities assessment process to the ACC's determination of priorities. I suppose the most obvious one, which we are very heavily involved in, is aviation security. We are also involved in transport related security. So it is not just aviation security; there are maritime and land transport areas. The exercise that has been embarked on by the ACC will help us do what we have to do in aviation security. The second major issue is the work that the ACC has been doing on firearms, whereby it complements a lot of work that we do on firearms, but where the two roles have sat together quite neatly and there has been no competition. We have worked closely and, in my view, for the national good.

**CHAIR**—Does Customs rely on the ACC for any particular categories of intelligence?

**Mr Woodward**—I am not sure I could say categories of intelligence—

**CHAIR**—Is it more random?

**Mr Woodward**—Intelligence operations are undertaken which obviously enhance our ability to do our job. Work has been done—some of it has flowed from the special investigations and some from intelligence work—over the years by the ACC in relation to established criminal networks, including South-East Asian crime networks and motorcycle gangs. All of them operate in an environment involving the importation of illicit goods, and the information and intelligence which comes from the ACC has been very helpful to us. Frankly, I would be surprised if the ACC did not find the intelligence information that we provide to them extremely useful. In fact, they would not have been able to do some of the work they have done without our intelligence or information.

**CHAIR**—The ACC has been examining the use of a special category of armed persons. A limited number of Customs officers have recently received access to firearms. Are you able to comment on legal and practical issues that were dealt with in arming these officers?

**Mr Woodward**—There are two categories of arming. For many years we have had people who are armed to deal with wildlife—crocodiles, buffalo and that sort of thing. We have had shotguns and rifles for years. In 1999, a former commissioner of the South Australian police undertook a review for us which focused generally on the arming of officers in Customs but also focused on our National Marine Unit. Flowing from that were amendments to the legislation that enabled us to arm our marine crews and, more recently, our Southern Ocean crews which, in a sense, are an extension of being armed to the point that we now have machine guns on the Southern Ocean vessel. We have people who are trained to operate machine guns and we are progressively putting machine guns onto our patrol boats. At the moment we have about 300 people who are armed. We are considering extending that number for a whole host of reasons, but there are policy issues involved that will require consideration.

I think the lessons to be learned are to ensure that national standards are applied, that a firm legislative basis is formed, that there are operational procedures which make absolutely clear the circumstances in which a firearm can and cannot be used and that it is a last resort—our people are equipped with a range of other devices, including capsicum spray—and that there is training to the AFP standard, which we do. Initially we had AFP people training our people to the same standard, but now they certify our trainers and we have a number of ex-SAS members and ex-police officers who do our training for us. So, yes, there are lessons that can be learned. We have had people equipped with side-arms for six years. With all of the ways in which we work, I think it has worked out reasonably well.

**Mr RICHARDSON**—Much of the work of the Australian Customs Service is focused outside Australia. What is the extent of the structure of overseas ACS offices?

**Mr Woodward**—Firstly, we do rely very heavily on intelligence and information we get from the AFP, which has about 32 posts overseas, and from other sources. We have very good contacts with customs services overseas and get a lot of intelligence from them. We have two people based in Washington, one in Jakarta, one in Bangkok, one increasing to three in Beijing and one in Brussels. Brussels obviously picks up the ecstasy and amphetamine related areas of not only Belgium but also Holland.

**Mr RICHARDSON**—You mentioned that you work fairly closely in liaison with the AFP.

**Mr Woodward**—Yes.

**Mr RICHARDSON**—Are these positions overseas essentially focused on intelligence gathering?

**Mr Woodward**—No. They do that, but that is not their purpose. They do a number of things. They are our eyes and ears in that region for what is going on in customs and customs related areas. Our European representative tells us what is happening in customs in Europe. He provides a lot of representational work at the World Customs Organisation based in Brussels but also performs an intelligence and information gathering role. So it varies with each post, but they are not there as intelligence officers or investigators; they perform a range of functions.

**Mr RICHARDSON**—Having that system in place—and you would say that you need to maintain it—sets a pattern so that if something is happening in Pakistan, for instance, a cell may be operating in Australia for similar purposes.

**Mr Woodward**—I have to say that a lot of the operational related intelligence that we get comes through the police networks. Police in a certain country provide intelligence to the AFP representative and then the intelligence comes back to the AFP and on to us. Some of it comes through the customs links, which would go through our customs people; some of it is directly customs. We have direct links between many customs services and one of our intelligence areas, so there is direct intelligence interchange not involving our representatives or the AFP. It is an amalgam of all of that.

**Mr RICHARDSON**—Lastly, has any of this intelligence gathered by overseas operatives been able to be provided to the ACC on any occasions since you have been involved? Will or can that happen?

**Mr Woodward**—We do. We have arrangements with the ACC where there is a very good exchange of information. They get a lot of information and intelligence from us. One deficiency is that we have problems, I think largely for technical reasons, in downloading directly from our intelligence system onto the ACC intelligence database—the ACID system—but as soon as those technical difficulties are overcome we will be able to automatically download. It is a painful manual method and it has not worked, frankly, as well as it should have, but we are now aware that it has to be fixed and we are working on it.

**CHAIR**—Thank you for your attendance. The committee appreciates your advice and assistance. That concludes today's hearing. I thank everyone for their attendance and cooperation, particularly those who are still here. The committee will reconvene to take further evidence in Canberra on Thursday, 13 October.

**Committee adjourned at 7.10 pm**